APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT DATED NOVEMBER 4, 2009

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 09-1174

JANEEN MILLER; JAMES MAHOOD,

Plaintiffs, Appellants,

v.

KRISTEN NICHOLS; BRENDA HARVEY,
in her capacity as Commissioner of the
Maine Department of Health and Human Services,

Defendants, Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE

[Hon. George Z. Singal, *U.S. District Judge*]

Before

Lynch , *Chief Judge*,
Torruella and Boudin , *Circuit Judges*.

November 4, 2009

Appendix A

LYNCH , *Chief Judge*. Plaintiffs are the parents of a child removed from them by the state after extensive proceedings resulted in a finding that the best interests of the child required termination of their parental rights. *In re G.M.*, No. PC-05-75 (Me. D. Ct. Jan. 23, 2008). The parents then sued in federal court, asserting violations of statutory and constitutional rights during the termination proceedings and particularly in reunification efforts mandated by state law. They sought injunctive relief to prevent a foster family's adoption of the child, as well as monetary damages.

Plaintiffs appeal from a district court order dismissing their suit for lack of jurisdiction and on the basis of issue preclusion. Because the injunction sought would negate the state court's judgment and because the factual issues underpinning plaintiffs' present claims for damages were addressed by the state court, the district court's dismissal on *Rooker-Feldman* and on issue preclusion grounds was appropriate. We affirm.

I.

We take the facts largely as described by the district court and drawn from the record of the state court proceedings. There are no facts in dispute that are material to the motion to dismiss. All facts recited are a matter of public record.

On December 25, 2005, plaintiffs Janeen Miller and James Mahood brought their biological infant daughter, G.M., to the emergency room of Mercy Hospital in

Portland, Maine, reporting that she had experienced a seizure. Fearing they were unable to treat G.M., the medical staff transferred the twenty-two-month-old to Maine Medical Center that night. Upon her arrival, doctors promptly diagnosed G.M. with severe failure to thrive, a diagnosis applied to infants whose physical development lags "far below usual levels for age." *Stedman's Medical Dictionary* 627 (26th ed. 1995). Despite the doctors' serious concerns about G.M.'s condition, Miller and Mahood objected to the performance of various medical tests, some of which were time sensitive, and insisted that G.M.'s symptoms were caused by a flu shot she had received that fall. After Miller and Mahood continued to resist efforts to treat G.M. for two days and gave vague and inconsistent answers about G.M.'s feeding patterns, medical staff became concerned for G.M.'s welfare while in her parents' care. The treating physician relayed her concerns to the Maine Department of Health and Human Services ("DHHS").

On December 27, 2005 DHHS obtained an Order of Preliminary Child Protection, placing the child in DHHS's temporary custody. Doctors expanded their diagnosis of G.M.'s condition to include "acute potentially life-threatening metabolic acidosis; temporary hypothyroidism; Vitamin D deficient rickets; profound developmental delays; and inadequate immunizations."

On May 8, 2006, a state district court judge entered a Jeopardy Order, placing G.M. in the full custody of

DHHS. In addition to recounting G.M.'s medical issues, the order identified the jeopardy presented to G.M. by each of her parents. The court particularly noted Miller's "mental health issues," including a potential psychotic disorder, as well as Mahood's "tendency to be passive in his relationship with [Miller]," a trait that the state court determined adversely impacted "[Mahood's] protective judgment." The parents agreed to the entry of the Jeopardy Order.

The issuance of the Jeopardy Order also required DHHS to engage in statutorily mandated efforts to reunify G.M. with her parents. Under Maine law, if a Jeopardy Order removes a child from parental custody and grants custody to DHHS, DHHS must play an active role in efforts to rehabilitate and reunify the family. *See* 22 M.R.S.A. § 4041(1-A)(A); *see also In re Christmas C.*, 1998 ME 258, 721 A.2d 629, 630 (Me. 1998). Maine law also places responsibilities on the child's parents, including "[r]ectify[ing] and resolv[ing] problems that prevent the return of the child to the home" and "[t]ak[ing] part in a reasonable rehabilitation and reunification plan." 22 M.R.S.A. § 4041(1-A)(B); *see also In re Christmas C.*, 721 A.2d at 630.

DHHS placed G.M. in a therapeutic foster home, where her health steadily improved. DHHS also worked with G.M.'s parents to develop a reunification plan, and assigned defendant Kristen Nichols, a social worker, to assist in the reunification effort. Following a psychiatric evaluation of Miller, DHHS determined that reunification services should be provided to the parents

separately. Mahood relocated to a separate residence from Miller, and G.M. had regular supervised visits with each of the parents individually. However, despite a court-approved agreement between the parties mandating Mahood's "separation from [Miller] 'in all areas,'" as a condition of reunification, Mahood and Miller maintained a relationship with each other.

Ultimately, DHHS concluded that reunification efforts had been unsuccessful. On October 16, 2006, DHHS filed a petition for the Termination of Parental Rights, alleging that G.M.'s biological parents remained unable or unwilling to protect G.M. from jeopardy and were "unable or unwilling to change in a timeframe designed to meet the needs of their daughter."

Between August and December of 2007, the Maine district court held nine days of hearings, reviewing testimony from twenty-one witnesses, including Miller and Mahood. On January 23, 2008, the court issued a thirteen-page order. After comprehensively evaluating the evidence that Miller and Mahood were unfit parents for G.M., the state court found that Miller suffered from "severe untreated mental health issues" and Mahood demonstrated deficient protective judgment.

The court specifically concluded that "Miller's lack of insight into her own mental health issues and her inability to recognize any contribution she or Mr. Mahood made to G.M.'s failure to thrive and developmental delays, in the face of the overwhelming evidence in th[e] record, provide[d] clear and convincing

evidence" that she was "unable to protect G.M. from jeopardy" and was unlikely to change in a reasonable period. It also found that Mahood similarly "continue[d] to lack insight as to the reason for G.M.'s removal [and] continue[d] to show no appreciation for the impact of his failure to exercise independent protective judgment on [G.M.'s] failure to thrive and the developmental delays from which she may never recover." These conclusions, among others, supported the court's determination that Miller and Mahood's parental rights had to be terminated.

The state district court further held that DHHS "ha[d] made reasonable efforts to rehabilitate and reunify the family," citing a variety of services that the agency had provided the family. Noting that G.M.'s foster parents were prepared to adopt her, the court concluded that it was in the best interest of G.M., who had been in foster care for more than two years, that parental rights be terminated.

Miller, Mahood, and G.M.'s guardian ad litem all filed requests for additional findings of fact and conclusions of law. On February 7, 2008, the state court issued an order, responding to some of the requests and deeming further findings unnecessary.

Miller and Mahood appealed the termination order to the Maine Supreme Judicial Court. On August 12, 2008, the Law Court affirmed the judgment. Its brief opinion held that the state trial court "could have found clear and convincing evidence in the record" to support

its determinations and that the "argument that [DHHS] did not engage in legitimate reunification efforts [wa]s not supported by the record." *In re G.M.*, Decision No. Mem. 08-149 (Me., Aug. 12, 2008). The parents' subsequent motion to reconsider was denied.

On October 22, 2008, Miller and Mahood filed a complaint in the federal court in Maine against both Nichols and her supervisor, Brenda Harvey, the commissioner of DHHS. The complaint sought injunctive and declaratory relief to prevent G.M.'s adoption by her foster family, as well as damages under the Americans with Disabilities Act ("ADA"), the Rehabilitation Act, the Health Insurance Portability and Accountability Act ("HIPAA"), and for various constitutional claims under 42 U.S.C. § 1983.

The complaint alleged in part that during the period when she served as G.M.'s caseworker, Nichols made no effort to accommodate Miller's possible mental illness and was consistently biased in favor of G.M.'s foster parents, and that this violated the ADA and Rehabilitation Act. Plaintiffs claimed that Nichols sought to condition Mahood's reunification with his daughter on his promise never to associate with Miller, in violation of both parents' First Amendment rights to free association. They also argued that Nichols threatened them with termination of parental rights if they did not waive their religious objections to immunizing G.M., in violation of their First Amendment rights to religious freedom. They further asserted that Nichols deliberately disclosed unfavorable information from Miller's mental

health records during a court-ordered medical evaluation of G.M., while withholding more favorable information, in violation of HIPAA.

On January 9, 2009, the federal district court of Maine held that it lacked subject matter jurisdiction over plaintiffs' claims for injunctive and declaratory relief under the *Rooker-Feldman* doctrine. *Miller v. Nichols*, 592 F. Supp. 2d 191, 196 (D. Me. 2009). It further found that plaintiffs' claims for damages were barred by the doctrine of issue preclusion and that, in any event, plaintiffs had no private right of action for HIPAA violations. *Id.* at 197 & n.1. Accordingly, it granted defendants' motion to dismiss. This appeal followed.

II.

The existence of federal subject matter jurisdiction, of a cause of action, and the applicability of res judicata, in the form of issue preclusion, are questions of law, subject to de novo review in this court. *See Amoche v. Guar. Trust Life Ins. Co.*, 556 F.3d 41, 48 (1st Cir. 2009) (subject matter jurisdiction); *Andrew Robinson Int'l, Inc. v. Hartford Fire Ins. Co.*, 547 F.3d 48, 51 (1st Cir. 2008) (failure to state a claim); *Global NAPs, Inc. v. Mass. Dep't of Telecomm.*, 427 F.3d 34, 43 (1st Cir. 2005) (issue preclusion).

Appendix A

A. *Rooker-Feldman Precludes Jurisdiction over Plaintiffs' Motion for Injunctive Relief*

The district court correctly determined that it lacked subject matter jurisdiction to review plaintiffs' motion for injunctive relief to prevent G.M.'s adoption. The *Rooker-Feldman* doctrine precludes federal jurisdiction over a challenge to a state court judgment to which the challenger was a party.[1] *See Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005); *Puerto Ricans for P.R. Party v. Dalmau*, 544 F.3d 58, 68 (1st Cir. 2008); *see generally* Wright, Miller & Cooper, *supra*, § 4469.1. Only the Supreme Court of the United States may invalidate state court civil judgments. *Exxon Mobil Corp.*, 544 U.S. at 292.

Federal courts' application of the *Rooker-Feldman* doctrine "does not depend on what issues were actually litigated in the state court."[2] *Maymo-Melendez v.*

---

1. The doctrine has limited exceptions, none of which are at issue in this case. *See* 18 Wright, Miller & Cooper, *Federal Practice and Procedure* § 4469.1, at 100-01, 127-37 (2d ed. 2002).

2. The Second Circuit recently discussed this point, using a hypothetical similar to the facts of this case, in *Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77 (2d Cir. 2005). As the court explained, "a federal plaintiff cannot escape the *Rooker-Feldman* bar simply by relying on a legal theory not raised in state court." *Id.* at 87. The court continued: "Suppose a state court, based purely on state law, terminates a father's parental rights and orders the state to take custody of his son. (Cont'd)

Alvarez-Ramirez, 364 F.3d 27, 33 (1st Cir. 2004). Rather, *Rooker-Feldman* bars jurisdiction whenever "parties who lost in state court . . . seek[] review and rejection of that judgment in federal court." *Puerto Ricans For P.R. Party*, 544 F.3d at 68 (internal quotation marks omitted).

Here, plaintiffs' motion for injunctive relief is an effort to do an end run around the state court's judgment. In Maine, an order terminating parental rights explicitly severs biological parents' right to participate in adoption proceedings. 22 M.R.S.A. § 4056(3). The desired injunction would amount to a reversal of the Maine Supreme Judicial Court's ruling on the termination of plaintiffs' parental rights, which permitted G.M. to be adopted. *See id.*; *see also Hoblock*, 422 F.3d at 87. Accordingly, the district court's dismissal of plaintiff's motion for lack of subject matter jurisdiction was both necessary and appropriate.

B. *No Private Right of Action under HIPAA*

Plaintiffs conceded both before the district court and on this appeal that HIPAA does not create a private right of action. The district court properly dismissed

---

(Cont'd)

If the father sues in federal court for the return of his son on grounds that the state judgment violates his federal substantive due-process rights as a parent, he is complaining of an injury caused by the state judgment and seeking its reversal. This he may not do, regardless of whether he raised any constitutional claims in state court, because only the Supreme Court may hear appeals from state-court judgments." *Id.*

plaintiffs' claims on this basis without additional discussion. Plaintiffs' argument that we should devise a new cause of action to accommodate their claim must fail. *See Alexander v. Sandoval*, 532 U.S. 275, 287, 121 S. Ct. 1511, 149 L. Ed. 2d 517 (2001) (Raising up causes of action where a statute has not created them may be a proper function for common-law courts, but not for federal tribunals.") (internal quotation marks and citation omitted).

C. *The Factual Issues Underlying Plaintiffs' Claims Were Addressed by the State Court and Are Barred by Issue Preclusion*

The district court also correctly held that the factual issues underlying plaintiffs' remaining claims were addressed by the state court's judgment and cannot be relitigated under the doctrine of issue preclusion. Issue preclusion reflects the fundamental principle that courts should not revisit factual matters that a party previously litigated and another court actually decided. *See, e.g.*, *Enica v. Principi*, 544 F.3d 328, 336 (1st Cir. 2008); *see also* Wright, Miller & Cooper, *supra*, § 4416, at 386-87. It is well settled that state court decisions have the same preclusive effect in federal courts that they would have in the state where the judgment was issued. *See Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 373, 116 S. Ct. 873, 134 L. Ed. 2d 6 (1996). "Federal courts may not employ their own rules . . . in determining the effect of state judgments, but must accept the rules chosen by the State from which the judgment is taken." *Id.* (internal quotation marks omitted); *see also Westcott*

Constr. Corp. v. Firemen's Fund of N. J., 996 F.2d 14, 16 (1st Cir. 1993); Wright, Miller & Cooper, *supra*, § 4469, at 72-73. We look to Maine preclusion law.

Maine courts apply a two-part test to determine if issue preclusion applies, asking first "if the identical issue was determined by a prior final judgment" and second if "the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding." *Portland Water Dist. v. Town of Standish*, 2008 ME 23, 940 A.2d 1097, 1099 (Me. 2008) (internal quotation marks omitted). The doctrine precludes courts from revisiting factual matters that meet this test, even when a second action seeks a different remedy than the initial litigation. *Id.*; *see also Macomber v. MacQuinn-Tweedie*, 2003 ME 121, 834 A.2d 131, 139 (Me. 2003).

Mutuality of parties is not required for issue preclusion. As plaintiffs concede in their brief, their argument that the parties to the prior action must be identical for issue preclusion to arise finds no support in Maine law. *See Hossler v. Barry*, 403 A.2d 762, 767 (Me. 1979) (finding mutuality of parties unnecessary for application of issue preclusion); *see also* Wright, Miller & Cooper, *supra*, § 4464, at 692.

We first address whether the identical factual issues plaintiffs raise in federal court were previously decided in the Maine state courts' proceedings. Plaintiffs' federal district court complaint alleges that Nichols violated their statutory and constitutional rights by not making adequate efforts to reunify the family. The

precise mechanisms for their failure were alleged to be: neglecting to accommodate Miller's disability, unlawfully sharing damaging mental health information with a state evaluator, falsely claiming to be a licensed social worker, inappropriately insisting that Mahood cut ties with Miller to avoid termination of his parental rights, and threatening to terminate plaintiffs' parental rights if they did not waive their religious objections to vaccinating G.M. Plaintiffs sued defendant Harvey under a theory of supervisory liability for Nichols's conduct.

Although plaintiffs make a variety of claims, the theme of their briefs in both the federal district court and this court is the failure to accommodate the parents' needs in the context of the reunification obligation.[3]

---

3. Plaintiffs have failed to identify any purported violations of their civil rights other than those related to the alleged deficiencies in the reunification process. All other arguments are waived.

We are making no determinations about whether the ADA or the Rehabilitation Act in fact impose any obligation to accommodate disabilities on a state in this context. It is clear though that § 504 of the Rehabilitation Act prohibits discrimination but does not require "affirmative efforts to overcome the disabilities caused by handicaps." *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 410, 99 S. Ct. 2361, 60 L. Ed. 2d 980 (1979).

In particular, we do not get into whether plaintiffs are "qualified individual[s]" who have been "denied the benefits of . . . services, programs, or activities" "by reason of" their disability under the ADA. 42 U.S.C. § 12132. *Cf. Buchanan v.*

(Cont'd)

Their arguments in any event depend on an identical factual issue—the alleged biased failure to accommodate—and, for purposes of issue-preclusion analysis, are one and the same. Plaintiffs' complaint also references violations of civil rights, identifying only First Amendment religious and associational rights and privacy rights that they allege were violated during the reunification process. The state court proceedings addressed the factual issues underpinning each of these claims.

We do not accept plaintiffs' assertion that a state court has only addressed an issue for purposes of issue preclusion if the earlier state court opinion contains an explicit discussion of the facts. That is not the law.[4] *See Grubb*, 281 U.S. at 477-78; *see also Hoult v. Hoult*, 157 F.3d 29, 32 (1st Cir. 1998); Wright, Miller & Cooper, *supra*, § 4420, at 521. Nor do we reach the state's argument that the entry of any termination order

---

(Cont'd)

Maine, 469 F.3d 158, 173-74 (1st Cir. 2006). The Maine Law Court has previously considered a case in which a mother contested the termination of her parental rights on the basis of the DHHS's alleged violations of the ADA. *See In re Angel B.*, 659 A.2d 277, 279 (Me. 1995). The court determined that the mother had failed to demonstrate any denial of services but did not explicitly address whether the ADA authorized her claim. *Id.*

4. Plaintiffs' variant on the argument is that there is no preclusion if the state courts did not resolve the statutory and civil rights issues by naming those statutes. That argument fails. *Grubb v. Pub. Util. Comm'n of Ohio*, 281 U.S. 470, 477-78, 50 S. Ct. 374, 74 L. Ed. 972 (1930).

necessarily means that the court found, as a matter of fact, that DHHS made reasonable but unsuccessful efforts at reunification and this necessarily, as a matter of law, precludes any further claims of lack of reasonable accommodations. Instead, we find that, on this record, plaintiffs actually made, and the state courts addressed, the contention that the state social work agency was biased and had not accommodated the parents' needs.

Under Maine law, courts may review the record and assess specific findings made by the prior court to determine precisely what issues were addressed in a prior judgment. *See Macomber*, 834 A.2d at 139-40 (evaluating the record as well as a previous court's order before concluding that issue preclusion did not bar plaintiff's claim); *see also* Wright, Miller & Cooper, *supra*, § 4420, at 510, 520.

An explanation of the Maine law on termination of parental rights sets the stage for our evaluation of the factual issues addressed in the state court proceedings. Under the state statute, 22 M.R.S.A. § 4041, DHHS must make "good faith efforts" to cooperate with parents in pursuit of reunification. *Id.* at 1-A(A)(3). This obligation arises as soon as the child is deemed to have entered foster care. *Id.* at 1-A.

The record reflects that plaintiffs vigorously challenged at every turn the reasonableness of social worker Nichols's efforts at reunification. For example, they elicited testimony from Nichols about her handling of Miller's mental health. On cross-examination, counsel

for one of the parents questioned Nichols directly about her familiarity with the ADA and made repeated inquiries into any "reasonable accommodations" she made for Miller's disability.

The state district judge rejected this line of reasoning and concluded that, based on the evidence before her, DHHS "ha[d] made reasonable efforts to rehabilitate and reunify the family and to finalize the permanency plan by providing extensive supervised visitation, counseling for the mother, a therapeutic foster home, in-home parenting, and caseworker services." Whether or not required by Maine law to make such a determination, explicitly or implicitly, in order to terminate parental rights, the district court specifically identified a series of reasonable steps taken by DHHS to address G.M.'s family's needs in light of the parents' circumstances. In doing so, the court rejected plaintiffs' factual assertions to the contrary.

Miller revisited these factual issues in her motion for further findings, which urged the court to find that Nichols had shared records "identifying . . . Miller as having a mental illness" and that Nichols failed to accommodate Miller's "mental health disability." Mahood's motion for further findings of fact suggested that the court should reject Nichols's testimony on Mahood's cooperation in the reunification effort outright. The court declined to do so. Instead, its order on these motions emphasized the "careful consideration" that it had already given "to all the evidence presented."

Plaintiffs argued these factual issues yet again before the Maine Supreme Judicial Court. Mahood specifically

sought review of whether DHHS's reconciliation efforts were "appropriate." The Law Court affirmed the district court's judgment and explicitly held that "the father's argument that the Department did not engage in legitimate reunification efforts is not supported by the record."

Following the rejection of plaintiffs' arguments on appeal, plaintiffs filed a motion for reconsideration. In their motion, they persisted in urging consideration of the fact that defendant Nichols "was inexperienced and biased against individuals with a perceived mental health issue." Once more, the Law Court considered this factual matter and ultimately denied plaintiffs' motion for reconsideration.

Plaintiffs assert that the issues raised in the federal complaint were not essential to the state court decisions and, if not essential, are not subject to issue preclusion. *See Beale v. Chisholm*, 626 A.2d 345, 347 (Me. 1993). They say that, as a matter of law, the termination proceeding necessarily concluded only that (1) G.M. was in jeopardy, (2) termination was in the best interests of the child, and (3) the circumstances of the parents' unwillingness or inability to protect the child from jeopardy are not likely to change in time reasonably to meet the child's needs. *See* 22 M.R.S.A. § 4055(1)(A) (1)(a), (B)(2)(a)-(b). This argument ignores both the constituent components of the second finding and what actually happened in the state court proceedings. It fails.

We now turn to the second prong of issue preclusion under Maine law. For issue preclusion to apply, a party must have a "fair opportunity and incentive to litigate the

issue in [the] prior proceeding." *Portland Water Dist.*, 940 A.2d at 1100 (internal quotation marks omitted). Under Maine law, "[a] party has a *fair opportunity* to litigate an issue if that party either controls the litigation, substantially participates in that litigation, or could have participated in the litigation had they chosen to do so." *State v. Hughes*, 2004 ME 141, 863 A.2d 266, 269 (Me. 2004) (emphasis in original).

It is clear that since plaintiffs actually litigated the issues in state court, they had both incentive and opportunity to present the claims. In the face of this obvious fact, they resort to one final argument. They say that their federal claims could not have been litigated before the state court. Plaintiffs rely on Maine R. Civ. P. 80, which precludes counterclaims in cases of determinations of parental rights and responsibilities. But plaintiffs misunderstand the rule. In fact, plaintiffs defensively used arguments that the state had failed to make reasonable efforts to reunify the family because it had not reasonably accommodated whatever disabilities the plaintiffs had.

Finally, because all claims against defendant Nichols are either without merit, precluded, or waived, any claim of supervisory liability against defendant Harvey must also fail. *See, e.g., Rivera v. Rhode Island*, 402 F.3d 27, 38-39 (1st Cir. 2005) ("Since the plaintiff has failed to state a constitutional claim at all, her claims against the other defendants for supervisory liability . . . fail.").

We *affirm* the district court's dismissal of all of plaintiffs' claims.

APPENDIX B — ORDER ON PENDING MOTIONS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MAINE DATED JANUARY 9, 2009

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

Docket no. 2:08-cv-355-GZS

JANEEN MILLER & JAMES MAHOOD,

Plaintiffs,

v.

KRISTEN NICHOLS & BRENDA HARVEY,
Commissioner of the Maine Department of
Health & Human Services,

Defendants.

ORDER ON PENDING MOTIONS

Before the Court are Plaintiffs' Motion for Temporary Restraining Order/Preliminary Injunction (Docket #s 7 & 9) and Defendants' Motion to Dismiss (Docket # 26). As explained herein, the Court GRANTS the Motion to Dismiss and, therefore, DENIES as MOOT Plaintiffs' Motion for Temporary Restraining Order/Preliminary Injunction.

Appendix B

I. STANDARD OF REVIEW

Defendant has moved to dismiss all of Plaintiffs' claims under Federal Rule of Civil Procedure 12(b)(1) & (6). Pursuant to Rule 12(b)(1), a party may move to dismiss a case for lack of subject matter jurisdiction. *See, e.g., American Fiber & Finishing, Inc. v. Tyco Healthcare Group, LP*, 362 F.3d 136, 138 (1st Cir. 2004) ("Federal courts are courts of limited jurisdiction. In the absence of jurisdiction, a court is powerless to act."); *see also* Fed. R. Civ. P. 12(h)(3) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."). Pursuant to Rule 12(b)(6), a party is entitled to have a claim against it dismissed when the allegations on which the claim depends "fail[ ] to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6).

When considering any motion under Rule 12(b), the Court accepts as true the well-pleaded factual allegations of the complaint and draws all reasonable inferences in the plaintiff's favor. However, in determining the existence of subject matter jurisdiction, the Court is not confined to the pleadings and may consider other reliable materials in the record to the extent those materials "illuminate [], supplement [], or even contradict [] other materials in the . . . record." *Aguilar v. U.S. Immigration & Customs Enforcement Div. of Dep't of Homeland Sec.*, 510 F.3d 1, 8 (1st Cir. 2007). Ultimately,

the plaintiff bears the burden of establishing the existence of subject matter jurisdiction. *See Aversa v. United States*, 99 F.3d 1200, 1209 (1st Cir. 1996).

Only after the Court has determined it has jurisdiction may it turn to the question of the sufficiency of the complaint. Then, the Court must determine whether the complaint, when taken in the light most favorable to the plaintiff, sets forth sufficient facts to support the claim for relief. *Clorox Co. v. Proctor & Gamble Commercial Co.*, 228 F.3d 24, 30 (1st Cir. 2000); *LaChapelle v. Berkshire Life Ins. Co.*, 142 F.3d 507, 508 (1st Cir. 1998). Pursuant to Rule 8(a), the pleader need only make "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Despite the liberal pleading standard of Rule 8, to survive a motion to dismiss, a complaint must allege "a plausible entitlement to relief." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, , 127 S. Ct. 1955, 1967, 167 L. Ed. 2d 929 (2007).

II. BACKGROUND

The parties have provided the Court with voluminous records from the state court custody proceedings that serve as the basis for this case. The relevant facts laid out below are culled from both the pleadings and these records. While the Court has reviewed the entire docket, given the limited nature of the Court's inquiry and the confidential nature of the proceedings below, the Court limits its recitation of the facts to the extent possible.

Appendix B

On December 25, 2005, G.M., the biological daughter of Plaintiffs Janeen Miller and James Mahood, was taken to the emergency room at Mercy Hospital. At the time, G.M. was 22 months old. She was transferred to Maine Medical Center where she was treated by Dr. Haymann. Dr. Hayman, in turn, reported her observations of G.M. and Miller to the Maine Department of Health and Human Services ("DHHS"). On December 27, 2005, DHHS sought an order of preliminary child protection over G.M. With the parents' consent, that order was entered on January 9, 2006.

With this order in place, G.M. was placed in a therapeutic foster home. DHHS assigned Defendant Kristen Nichols as the social worker for G.M.'s case with the expressed goal of reunifying G.M. with Miller and Mahood. By all accounts, the relationship between Nichols and Miller was unproductive. As alleged in the Complaint, Nichols perceived Miller as having a disability, namely, a mental illness, but admittedly took no steps to provide Miller with any accommodations and, in fact, denied Miller access to some DHHS services. Nichols also conditioned Mahood's reunification with G.M. on him promising to not associate with Miller. In the course of G.M.'s court-ordered medical evaluations in 2007, Nichols, without proper authorization, sent the evaluator selected unfavorable psychiatric records of Miller. Plaintiffs claim that Nichols also misrepresented her status as a licensed social worker when she only had a conditional license. Plaintiffs seeks to hold Defendant Harvey liable for the alleged wrongs of Defendant Nichols claiming that there was a failure to properly

train and supervise Nichols in connection with her work on G.M.'s case.

On October 16, 2006, DHHS filed its Petition for the Termination of Parental Rights, which sought to permanently terminate the parental rights of Plaintiffs as to G.M. Judge Bradley of the Maine District Court conducted eight days of hearings in August through October 2007. After reviewing the evidence received at those hearings, Judge Bradley reopened the record and received additional testimony on December 14, 2007. At the close of this last hearing, Judge Bradley admittedly expressed that she was inclined to deny termination. (*See* Feb. 7, 2008 Order (Docket # 25-4) at 1 n.1.)

Nonetheless, after a full review of all of the evidence, Judge Bradley filed a 13-page Order Terminating Parental Rights (Docket # 16) on January 23, 2008. In this Order, Judge Bradley found "clear and convincing evidence that Janeen Miller has severe untreated mental health issues" and that these issues, in turn, have left Miller "unable to protect [her daughter] from jeopardy." (Order (Docket # 16) at 8-9.) As to James Mahood, the court concluded that he was "unable to safely parent his child." (*Id.* at 9.) The Court also concluded that DHHS had "made reasonable efforts to rehabilitate and reunify the family" and that after two years in a therapeutic foster home, it was in the best interests of the child that parental rights be terminated. (*Id.* at 12.)

Appendix B

Miller, Mahood and the Guardian Ad Litem all requested additional findings of fact and conclusions of law following the receipt of the District Court's January 23, 2008 Order. Miller requested specific findings that Nichols violated the ADA and HIPAA during her management of the case. (*See* Miller Add'l Requests for Ruling (Docket # 25-3) at 6-7.) Ultimately, Judge Bradley refused to make these additional requested findings. (*See* Feb. 7, 2008 Order (Docket # 25-4) at 12.)

The parents appealed Judge Bradley's decision to the Maine Law Court. Miller's Appellant Brief explicitly included claims that Nichols "violated the Americans with Disabilities Act, HIPAA and 42 U.S.C. § 1983." (Appellant Brief (Docket # 24-3) at 4, 25, 36-37.) In a similar vein, Mahood's Appellant Brief included arguments that "the State did not attempt to provide proper reunification." (Appellant Brief (Docket # 24) at 20-21.) In a short decision dated August 12, 2008 (Docket # 16-2), the Law Court affirmed the District Court's decision terminating the parental rights of both Miller and Mahood. Appellants then sought reconsideration. In their Brief in Support of the Motion for Reconsideration (Docket # 24-5), Appellants primarily argued that there were violations of substantive due process, invoked the bias of Nichols and again alleged ADA violations. (*See* Reconsideration Brief (Docket # 24-5) at 4-8.) The Law Court denied the parents' motion for reconsideration on September 9, 2008. (*See* Order Denying Motion to Reconsider (Docket # 16-3).)

Appendix B

On October 20, 2008, Plaintiffs filed the instant Complaint (Docket # 1) with this Court. Three weeks later, Plaintiffs filed the pending Motion for TRO/ Preliminary Injunction (Docket # 7). Plaintiffs' Amended Complaint (Docket # 3) states claims under the Americans with Disabilities Act (Counts I & II), Section 504 of the Rehabilitation Act (Count III), 42 U.S.C. § 1983 (Freedom of Religion) (Count IV), Violations of HIPAA,[1] the Privacy Act and 42 U.S.C. § 1983 (Count V), 42 U.S.C. § 1983 (Freedom of Association) (Count VI), 42 U.S.C. § 1983 (Fraud in Deprivation of liberty Interest) (Count VII), and 42 U.S.C. § 1983 (Supervisory Liability) (Count VIII). In Count IX, the Amended Complaint also seeks injunctive and declaratory relief for the various violations of Plaintiffs' substantive due process rights, including an order enjoining DHHS from placing G.M. up for adoption and an order allowing Plaintiffs continued visitation.

---

1. HIPAA is the acronym for the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, 110 Stat. 1936. In connection with the pending motions, Defendant asserted that there is no private right of action under HIPAA. (*See* Def. Mot. to Dismiss (Docket # 26) at 12.) In response, Plaintiffs agreed that it could find no research suggesting that there is a private right of action for HIPAA violations. (*See* Pls. Response (Docket # 27) at 11.) Thus, the Court need not further discuss or consider the "HIPAA claim" asserted in Count V and considers that portion of Count V DISMISSED without objection.

III. DISCUSSION

Despite the troubling factual allegations of this case, this Court, as a federal court with limited jurisdiction, cannot serve as a forum for the Plaintiffs to relitigate issues already raised and decided in the prior state court proceedings. Defendants specifically invoke two legal doctrines, which they argue prevent the Court from hearing any of Plaintiffs' asserted claims: (1) the Rooker-Feldman doctrine and (2) issue preclusion.

A. The *Rooker-Feldman* Doctrine

Pursuant to the Rooker-Feldman doctrine and 28 U.S.C. § 1257, a party who obtains a final judgment from the highest court of a state — in this case, from the Maine Law Court — may only have that judgment reviewed by writ of certiorari to the United States Supreme Court. The Rooker-Feldman doctrine precludes "parties who lost in state court from 'seeking review and rejection of that judgment' in federal court." *Puerto Ricans for Puerto Rico Party v. Dalmau*, 544 F.3d 58, 68 (1st Cir. 2008) (quoting *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284, 125 S. Ct. 1517, 161 L. Ed. 2d 454 (2005)). To the extent that Plaintiffs have asked the Court to "enjoin the State from placing G.M. up for adoption" (Am. Compl. P 143; Pls. Mot. for TRO/Prelim. Inj. (Docket # 7) at 33), it would appear that Plaintiffs are in fact asking this Court to review and reject the final judgment affirmed by the Law Court on August 12, 2008. (*See* In re G.M. Memorandum of Decision (Docket # 16-2).) In fact,

multiple federal courts have acknowledged that federal cases seeking to challenge the termination of parental rights by state courts fall within the heartland of cases preempted by the Rooker-Feldman doctrine. *See, e.g., Hoblock v. Albany County Bd. of Elections*, 422 F.3d 77, 87 (2d Cir. 2005) ("Suppose a state court . . . terminates a father's parental rights and orders the state to take custody of his son. If the father sues in federal court for the return of his son on grounds that the state judgment violates his federal substantive due-process rights as a parent, he is complaining of an injury caused by the state judgment and seeking its reversal. This he may not do, regardless of whether he raised any constitutional claims in state court, because only the Supreme Court may hear appeals from state-court judgments."); *Doe v. Mann*, 415 F.3d 1038, 1043 (9th Cir. 2005) (concluding that a challenge to the termination of parental rights fell "within the traditional boundaries of the Rooker-Feldman doctrine" while ultimately holding that there was jurisdiction based on a narrow exception for "child custody proceedings involving Indian children"). With respect to the claims now asserted by Plaintiffs, there is no doubt that Count IX, which asks for injunctive and declaratory relief, essentially seeks to overturn the termination of parental rights; such a claim is clearly precluded under the Rooker-Feldman doctrine. On this basis, the Court finds that it has no jurisdiction to grant Plaintiffs the injunctive and declaratory relief sought in Count IX and in the pending Motion for Preliminary Injunction.

Appendix B

In responding to Defendants' Motion to Dismiss, Plaintiffs argue that this case falls outside Rooker-Feldman because they now seek damages for various civil rights violations as well as violations of the ADA and the Rehabilitation Act. They emphasize that these rights were violated not by the state court but by DHHS, specifically Nichols. As to Plaintiffs' remaining claims, this argument has merit. As the Supreme Court has recently held in *Exxon Mobil*, the Rooker-Feldman doctrine does not deprive a district court of subject-matter jurisdiction "simply because a party attempts to litigate in federal court a matter previously litigated in state court. If a federal plaintiff presents some independent claim, albeit one that denies a legal conclusion that a state court has reached in a case to which he was a party . . . , then there is jurisdiction and state law determines whether the defendant prevails under principles of preclusion." *Exxon Mobil*, 544 U.S. at 293 (internal quotation omitted). To the extent that Plaintiffs' Complaint seeks money damages for alleged violations of the ADA, Section 504 of the Rehabilitation Act and 42 U.S.C. § 1983 from Defendants Nichols and Harvey, these claims would appear to fall within this exception to the Rooker-Feldman doctrine described in *Exxon Mobil*. Thus, in accordance with the direction of the *Exxon-Mobil* opinion, the Court proceeds to consider whether Plaintiffs' remaining claims are precluded.

B. Issue Preclusion

Unlike 28 U.S.C. § 1257 and Rooker-Feldman Doctrine, the question of whether a judgment is final for purpose of preclusion is a question of state law. *See Federacion de Maestros de Puerto Rico v. Junta de Relaciones del Trabajo de Puerto Rico*, 410 F.3d 17, 22 n.8 (1st Cir. 2005). Under Maine law, res judicata may be found on the basis of either claim preclusion or issue preclusion. *Portland Water Dist. v. Town of Standish, 2008 ME 23*, 940 A.2d 1097, 1099 (Me. 2008). "Whereas claim preclusion is focused on the claims set forth in the prior proceeding, [issue preclusion] concerns factual issues, and applies even when the two proceedings offer different types of remedies."[2] *Id.* at 1100.

The requirements of issue preclusion under Maine law are: (1) the identical issue was determined by a prior final judgment, and (2) the party estopped had a fair opportunity and incentive to litigate the issue in a prior proceeding." *Machias Sav. Bank v. Ramsdell*, 1997 ME 20, 689 A.2d 595, 599 (Me. 1997). In examining the first

---

2. In opposing the Motion to Dismiss, Plaintiffs argue (without citation) that they had no right to a jury trial in the termination proceeding and, thus, should be allowed to pursue their claims under the ADA and 42 U.S.C. § 1983 in a separate action where they can have a jury trial. (*See* Pls. Resp. (Docket # 27) at 8.) However, in *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979), the Supreme Court held a litigant's right to a jury trial was not violated by the application of issue preclusion due to a prior action in which the facts were not decided by a jury. *See id.* at 334.

requirement, the Court looks at what issues were determined in the proceeding that resulted in the termination of Plaintiffs' parental rights. In that state court action, Plaintiffs' parental rights were terminated as the result of a petition filed by DHHS in accordance with 22 M.R.S.A. § 4052. The petition was then decided by the state court in accordance with the standard laid out in 22 M.R.S.A. § 4055. While the overriding focus of the court's decision is "the best interest of the child," the statute requires the court hearing the petition to consider, in relevant part, all of the efforts made by DHHS to reunify the family. *See In re Justin T.*, 640 A.2d 737, 740 (Me. 1994) (noting that DHHS' "failure to meet its reunification obligations is only one factor to be considered in a termination case"). Thus, one of the issues explicitly decided in the termination proceeding was that DHHS "made reasonable efforts to rehabilitate and reunify the family." (Order (Docket # 16) at 12.) Plaintiffs' current claims essentially ask this Court to find that DHHS' reunification efforts in the case of G.M. were marred by violations of Plaintiffs' constitutional rights and violations of Miller's statutory rights under the ADA and the Rehabilitation Act. If true, DHHS' reunification effort would necessarily be inadequate and unreasonable. In short, the Court could not make the factual findings necessary to support Plaintiffs' claims without reexamining identical issues that were decided in the prior case.

As to the second prong, the Court finds Plaintiffs had a fair opportunity and incentive to litigate the issues now raised in this case in the prior state case. First, the

record amply demonstrates that Plaintiffs substantially participated in the litigation. *See State v. Hughes*, 2004 ME 141, 863 A.2d 266, 269 (Me. 2004) ("A party has a *fair opportunity* to litigate an issue if that party either controls the litigation, substantially participates in that litigation, or could have participated in the litigation had they chosen to do so.") Given what was at stake, the Court also finds that Plaintiffs had every incentive to litigate the issues surrounding DHHS' reunification efforts as well as any deprivation of constitutional rights or bias that contributed to DHHS' petition to terminate Plaintiffs' parental rights. In fact, the briefs provided to this Court show that Plaintiffs raised these issues repeatedly but neither the Maine District Court nor the Law Court found these issues had merit or made factual findings that would support a claim under 42 U.S.C. § 1983, the ADA or the Rehabilitation Act. Moreover, in an effort to show that it is possible to raise an ADA claim in the context of a termination proceeding, Defendants have brought to this Court's attention at least one reported Maine case in which a mother did raise claims that DHHS violated the ADA in the context of a termination proceeding. *See In re Angel B.*, 659 A.2d 277, 279 (Me. 1995). In short, the Court finds that the factual issues raised by Plaintiffs' claims are identical to some of the factual issues decided in the prior state court proceeding and that Plaintiffs had the opportunity and incentive to litigate those issues in the prior proceeding.

Having found that the Court lacks subject matter jurisdiction over Plaintiffs' claims for injunctive and declaratory relief and that Plaintiffs' remaining claims are barred by res judicata as a result of issue preclusion, the Court need go no further.

IV. CONCLUSION

The Court hereby GRANTS Defendants' Motion to Dismiss (Docket # 26) and, on that basis, DENIES as MOOT Plaintiffs' Motion for Temporary Restraining Order/Preliminary Injunction (Docket #s 7 & 9). In light of these rulings, the hearing scheduled for January 12, 2009 is CANCELLED.

SO ORDERED.

/s/ George Z. Singal
United States District Judge

Dated this 9th day of January, 2009.